IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17860 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOKILABEN AMBALAL PATEL - Petitioner(s)
Versus
THE LIQUIDATOR CHAROTAR NAGRIK SAHAKARI & 2 - Respondent(s)

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Appearance :
MR BHARAT JANI for Petitioner(s) : 1,
MR AJ YAGNIK for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 04/10/2006

ORAL JUDGMENT

1. Rule. Learned advocate Shri Yagnik wavies service of rule on behalf of respondents.

2. In this petition, the petitioner has challenged the action of the respondents of seeking to take possession of a residential house no.35/A situated at Bazar Road, Virsad, Tal. Borsad, Dist. Anand.

3. It is not in dispute that the petitioner had not taken any loan from the respondents. It is also not in dispute that the petitioner did not offer said property by way of security for covering any loan. It is also not in dispute that son of the petitioner borrowed some money from the respondents and defaulted in making payments thereof. Bank, therefore, filed summary suit No.2944/02 before the Board of Nominees. The suit has been decreed in favour of the Bank and so far not set aside by the higher Court.

3.1. To execute the decree, respondents initiated steps. As part of the attempt to recover the amount,

respondents affixed a notice on the said residential premise suggesting that the respondents have taken possession of the property for execution of the decree. It is this action of the Bank which the petitioner has challenged in this petition.

4. Having heard learned advocates appearing for the parties, it is clear that the respondents could not have attempted to take possession of the property in question. In fact, it is stated before the Court that despite affixing of the notice, actual possession of the property remained with the petitioner where she continues to reside even at present. The action on the part of the respondents, therefore, of affixing the notice and seeking to take possession cannot be upheld.

5. Learned advocate Shri Yagnik for the respondents however pointed out that to enable her son to obtain loan from the Bank, the petitioner had signed the documents wherein a specific condition was that as her successor, her son has 1/3rd share in the said residential property and till the Bank dues are

clear, share of her son would not be transferred or sold by the petitioner.

6. In view of this, though the action of the respondents is required to be quashed, the petitioner cannot escape the responsibility to fulfill the above condition.

7. Under the circumstances, petition is allowed. Action of the respondents in seeking to take possession of the property in question is quashed. The petitioner shall however not transfer, sell and assign 1/3rd share in the said residential unit as undertaken by her before the Bank.

8. Subject to above directions, the petition is allowed. Rule is made absolute. No costs.

(Akil Kureshi, J.)

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